IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3201 OF 2004

IN

SUIT NO.3135 of 2004

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Manjula Amritlal Shah
and ors. ...Plaintiffs

v/s.

Bharatkumar R. Shah & Ors. ...Defendants

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Mr.Bharat Joshi i/b Ramesh Jain for the Plaintiffs.

None for Defendant No.1.

Mr.Lalit Jain for Defendant No.2.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH SEPTEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs. Plaintiffs, who are three in numbers, are daughters of the deceased Ranchoddas C. Shah. Defendant No.1 is the son of the deceased, Defendant No.2 is the widow and Defendant No.3 is another daughter. In short, Ranchoddas died leaving behind him four daughters and one son and widow. The property left, according to the Plaintiffs, which was owned by the deceased at the time of his death is described in Exh.A. Item No.1 is a flat which is admittedly presently occupied by the Defendant No.1/son and item No.3 is a Locker in a bank which stands in the joint names of Defendant No.1 and Defendant No.2 widow. I have been informed that presently that locker is not being operated by anybody. According to the Plaintiffs, this property was owned by the deceased and therefore they have

share in the property. So far as flat is concerned, it appears that the Defendant No.1 had filed a civil suit in City Civil Court to which he had joined only the widow, the present Defendant No.2 as a party. In the suit it was the case of the Defendant No.1 that the flat though stand in the name of Defendant No.2/widow, the property was purchased by the deceased and therefore is the property of the deceased and therefore he has a share in the property. It appears that in that suit other heirs of the deceased were not joined as parties. In that suit, consent terms were filed signed by the Defendant No.1 and Defendant No.2. In clause 3 of the consent terms it is declared that the Defendant No.2 is the absolute owner of the flat and she has agreed that the name of the Defendant No.1 should be incorporated as joint owner in the share certificate of the flat. In clause 4 it is stated that after the death of Defendant No.2, Defendant No.1 will become the absolute owner of the flat. So far as ornaments in the locker are concerned, in clause 5 of the consent terms it is stated that the ornaments will be shared equally by the Defendant No.1 and the Defendant No.2. It is further declared that after her death, ornaments would be given to the wife of

Defendant No.1. Suit is being contested only by Defendant No.1, who has filed his reply. So far as Defendant No.2, widow is concerned she has also filed reply, but she is supporting the Plaintiffs. According to her, her signature on the consent terms was obtained by misrepresentation and by coercion. According to her though even according to consent terms she is owner of the flat, she has been driven out of the flat by the Defendant No.1. According to affidavit, that the Defendant No.2/widow has filed in this Notice of Motion, she is not the owner of the flat, but the real owner of the flat was her deceased husband. Therefore, according to her the Plaintiffs and the Defendants have equal share in the flat. In so far as the ornaments lying in the safe deposit vault are concerned, according to the Defendant No.1, they were owned by the deceased.

2. Defendant No.1 is represented by lawyer. Reply has been filed. The matter was called yesterday. None appeared for the Defendant No.1. Even today none appears for the Defendant No.1. According to affidavit of the Defendant No.1, the flat was not the property of the deceased, but it was the absolute property of the Defendant No.2 and now because of the

consent terms he is joint owner of the property. He states that though he had gone to the City Civil Court with a case that the real owner of the flat was his deceased father, in view of the fact that the Defendant No.2 is occupying the flat since inception as owner, he was advised to accept her as the absolute owner of the flat. It, thus, appears that looking to the matter from any point of view, Defendant No.1 does not claim to be the sole owner of the flat. Even, according to him, the Defendant No.2 was the absolute owner of the flat and according to the Defendant No.2 she was not the absolute owner of the flat, but the flat was owned by her deceased husband.

3. The Plaintiffs in this Notice of Motion have prayed for appointment of Receiver on the flat. According to the Plaintiffs, though the Defendant No.2 was admittedly occupying the flat, she has been driven out of the flat by the Defendant No.1 and therefore, Receiver should be appointed so that the Defendant No.2 can occupy at least one room in the flat. But the Plaintiffs have not placed any material on record to show that the flat is capable of being used by the family of the Defendant No.1 as

also by the Defendant No.2 independently.

4. Taking overall view of the matter, therefore, in my opinion, it will not be appropriate to appoint the Receiver on the flat at this juncture. Interest of justice can be served by making following order.

O R D E R

(i) Notice of Motion is granted in terms of prayer clause (b). It is clarified that interim injunction is being granted in relation to the property described at item No.1 and item No.3 of Exh.A to the plaint.

(ii) Plaintiffs shall be at liberty to apply for further reliefs by taking out fresh Notice of Motion after giving details as indicated above.

(iii) Notice of Motion disposed of.

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